

IN THE MATTER OF	:	BEFORE THE
ENCLAVE AT ELLICOTT	:	HOWARD COUNTY
STATION	:	BOARD OF APPEALS
Petitioner	:	HEARING EXAMINER
	:	BA Case No. 09-008C

.....

DECISION AND ORDER

On May 11, 2009, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of Enclave at Ellicott Station¹ to modify the age-restricted adult housing conditional use approved in Board of Appeals Case No. 04-049C and which is located in an R-20 (Residential: Single) Zoning District, filed pursuant to Section 131.H.4 of the Howard County Zoning Regulations (the "Zoning Regulations").

The Petitioner certified that notice of the hearing was advertised and that the subject property was posted as required by the Howard County Code. I viewed the subject property as required by the Hearing Examiner Rules of Procedure.

Sang Oh, Esquire, represented the Petitioner. Bruce Harvey testified on behalf of the Petitioner. Ralph Ballman testified in opposition to the petition.

FINDINGS OF FACT

Based upon the preponderance of evidence presented at the hearing, I find the following facts:

1. The irregularly shaped Site is located on the west side of Old Mill Road, about 170 feet

north of MD 99 (Old Frederick Road). It lies within the 2nd Election District and is referenced on Tax Map 17, Grid 8, as Parcel 27 Lot 1 (the "Site").

2. In BOA Case No. 04-049C, which is incorporated by reference into this Decision and Order, the original Petitioner Skirven Enterprises received approval to develop the Site, in pertinent part, as an Age-restricted Adult Housing community with 68 single-family attached dwelling units, and a 50-foot by 82-foot swimming pool and a 3,200-square foot community center building situated in the Site's southwest area and within an "island" bordered by private streets.

3. Through Site Development Plan 05-117 (the "Approved Plan"), the original Petitioner received approval to develop 69 units, one more than approved by BOA Case No. 04-049C.

4. According to the Technical Staff Report (the "TSR"), Record Plat 18317 states the Site comprises 15.305 acres, and the Approved Plan, 15.35 acres. Subsequent to the approval of BOA Case No. 04-049C, the Site was divided into 12 land condominium "units." The property later went into foreclosure after the construction of only two individual dwelling units. The Enclave at Ellicott Station, the current Petitioner, purchased 10 of the 12 condominium land units from the foreclosing bank, which comprises 14.677 acres.

5. Vicinal Properties. Adjacent properties are also zoned R-20. Parcels 28 and 597 to the north are improved with single-family detached dwellings either fronting or having driveway access to Old Mill Road. Parcel 227 to the northeast is improved with a two-story single-family detached frame dwelling fronting on Old Mill Road. All lots to the Site's east are part of the Old Mill subdivision and are each improved with a two-story, single-family frame dwelling fronting

¹ The Petition identifies the Petitioner as Hebron Manor I LLC, but at the hearing, Bruce Harvey clarified that the

on Old Mill Road. The properties to the Site's south, running east to west, are improved with a non-conforming produce stand and other structures (Parcel 27) and with single-family detached dwellings (Parcels 26, 415, 25). To the Site's west, the lots within the North Farm subdivision are each improved by a single-family detached dwelling.

6. Roads. Old Mill Road has two travel lanes and a varying paving width within an existing 50-foot right-of-way. The posted speed limit is 25 miles per hour.

7. Sight Distance. The estimated sight distance from the driveway entrance is more than 600 feet to the north and more than 500 feet to the south. No change to this access is proposed.

8. Traffic. The traffic volume on Old Mill Road north of MD 99 was 1,475 average daily trips as of October 1998.

9. Water and Sewer. The Site is served by public water and sewer.

10. General Plan. Policies Map 2000-2020 of the 2000 General Plan designates the Site as "Residential Areas." The General Plan Transportation Map depicts Old Mill Road as a Minor Collector.

11. Proposed Modification. The Petitioner seeks to modify two elements of the previously approved Conditional Use: elimination of the swimming pool and a reduction in the size of the 3,200 square foot community building center to 2,000 square feet. In support of this request, the Petition states costs associated with a private swimming pool are prohibitive and not an essential amenity in an age-restricted adult housing development. It also states the size of the approved community center is twice the required size.

12. In response to questioning about the loss of on-site public areas, spaces, or amenities, Mr. Harvey stated that the tightness of the site prohibits gazebos or large seating areas along the walking paths and agreed to provide benches where possible along the path.

13. Mr. Ballman testified that the intensity of the development mandated the level of amenities originally approved for the Site.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, I conclude as follows:

I. General Criteria for Conditional Uses (Section 131.B)

Section 131.B requires me to evaluate the proposed conditional use's harmony with the land uses and policies indicated in the Howard County General Plan for the R-20 zone. In evaluating a plan under this standard, I must consider (a) the nature and intensity of the use, the size of the site in relation to the use, and the location of the site with respect to streets giving access to the site, and (b) if a conditional use is combined with other conditional uses or permitted uses on a site, whether the overall intensity and scale of uses on the site are appropriate, given the adequacy of proposed buffers and setbacks.

This section was evaluated in BOA Case No. 04-049C. Because the buildings' orientation, the access points, and the roads are unchanged, as is the proposed nature and intensity of the use, and considering DPZ has approved the site development plan, the reevaluation of the development's compliance with this section is unmerited.

II. Specific Criteria for Age-restricted Adult Housing, General (Section 131.N.1)

The section was also evaluated in BOA Case No. 04-049C, and is here reevaluated only with respect to the criteria implicated by the proposed modification request.

1. Section 131.N.1.a(6). At least 50 percent of the gross site area in the RC, RR and R-ED Districts, at least 35 percent in the R-20, R-12, and R-SC Districts, and at least 25 percent in R-SA-8 and R-A-15 Districts, shall be open space or open area in accordance with the Subdivision and Land Development Regulations. The open space or open area shall provide amenities such as pathways, seating areas and recreation areas for the residents, and shall be protective of natural features.

According to the approved plan, 65 percent of the Site is open space or area, exclusive of the community center building and swimming pool, the area of which do not factor into the calculation of the 50 percent open space or area requirement. Because the proposed modification will not reduce the open space or area acreage, the petition complies with this component of Section 131.N.1.a(6).

The size of this open space area will also increase with the elimination of the swimming pool, even accounting for the apparently slightly larger community center building footprint.² Although Mr. Harvey agreed to install several sitting areas along the walking path as a condition of approval (but not a gazebo, owing to the tightness of the site plan), this area appears to be the best location for an outdoor seating area and gazebo.

2. Section 131.N.1.a(7). Accessory uses may include social, recreational, educational, housekeeping, security, transportation or personal services, provided that use of these services is limited to on-site residents and their guests.

The swimming pool accessory use is eliminated, making this section inapplicable.

3. Section 131.N.1.a(8). At least one on-site community building or interior community space shall be provided that contains a minimum of:
(a) 20 square feet of floor area per dwelling unit, for the first 99 units with a minimum area of 500 square feet, and
(b) 10 square feet of floor area per dwelling unit for each additional unit above 99.

² The modified Conditional Use Plan does not depict the revised footprint.

The proposed modification to reduce the size of the community center building to 2,000 square feet accords with this requirement.

ORDER

Based upon the foregoing, it is this **26th day of May 2009**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

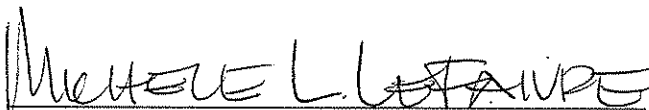
That the petition of the Enclave at Ellicott Station to modify the Age-restricted Adult Housing Conditional Use approved in Board of Appeals Case No. 04-049C by eliminating the swimming pool and reducing the size of the community center building to 2,000 square feet, in an R-20 (Residential: Single) Zoning District, is **GRANTED;**

Provided, however, that:

1. The Conditional Use shall be conducted in conformance with and shall apply only to the Modification of an approved Conditional Use for an Age-restricted Adult Housing Development as described in the petition and as depicted on the Conditional Use plan submitted on March 17, 2009, and not to any other activities, uses, or structures (except as required by Condition No. 2) on the Property.
2. The Petitioner shall create a seating area and construct a gazebo in the "island" area, as depicts on the Conditional Use Plan submitted on March 17, 2009.
3. The Petitioner shall comply with all agency comments.

HOWARD COUNTY BOARD OF APPEALS

HEARING EXAMINER


Michele L. LeFaivre

Date Mailed: _____

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.